General Electric Company *and* United Electrical, Radio and Machine Workers of America (UE). Cases 6–CA–24454 and 6–CA–26117[1]

July 10, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On August 9, 1995, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent, the General Counsel, and the Union filed exceptions to the judge's decision[2] and supporting briefs, the General Counsel and the Union filed answering briefs to the Respondent's exceptions, the Respondent filed an answering brief to the General Counsel's and the Union's exceptions, and the Union filed a reply to the Respondent's answering brief.[3]

The National labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[4] and conclusions as modified,[5] and to adopt the judge's recommended Order as modified.[6]

The judge found that Foreman Marvin Brannon threatened employee Dale Ramsey in violation of Section 8(a)(1) on March 16, 1992, by telling him that if the Union got in, ''they would close the plant and do away with the 12 hour days within two weeks.'' We agree that the portion of Brannon's threat pertaining to the elimination of the ''12 hour days within two weeks'' constituted a threat, because it was joined with the threat to close the plant and because no attempt was made to explain a nonretaliatory basis for the elimination of the 12-hour day.[7]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, General Electric Company, Washington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

1. Substitute the following for paragraphs 2(a) and (b).

''(a) Within 14 days after service by the Region, post at its facilities in Washington, West Virginia, copies of the attached notice marked ''Appendix.''[32] Cop-

[1] Subsequent to the issuance of the judge's decision, the Union filed a motion with the Board to allow it to withdraw its objections to the election in Case 6–RC–10676, and to sever that case from this proceeding. On October 13, 1995, the Board granted that motion and severed Case 6–RC–10676 from the instant proceeding and remanded it to the Regional Director for Region 6 for further processing. Accordingly, nothing in the judge's decision or the exceptions pertaining to the objections to the election is currently before the Board.

[2] No exceptions were filed to the judge's dismissal of the 8(a)(1) complaint allegations based on Foreman Marvin Brannon's alleged threat to employee Arnett Purkey and Team Manager James Hewitt's alleged interrogation of employee Thomas Harvey.

[3] The Respondent has requested, and the General Counsel has opposed, oral argument in this case. The request is denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.

[4] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent's exceptions assert that the judge's decision evidences bias and prejudice. On our full consideration of the entire record in these proceedings, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in his analysis and discussion of the evidence.

[5] The judge found that General Manager Robert Smith violated Sec. 8(a)(1) by threatening unit employees when he displayed transparencies during mandatory meetings in late October 1991 implying that, by voting for the Union as their collective-bargaining representative, the ''GE-UE National Agreement would automatically'' eliminate the employees' 11th holiday and their 2-percent vacation pay and ''change all local pay practices to conform to the National Agreement.'' In affirming the judge's finding, we note that he failed to observe that Smith's threat was implicitly predicated not only on the Union's election victory but also on the timely ratification of the National Agreement—the two preconditions for the application of the GE-UE National Agreement. In any event, we agree with the judge that the Respondent has not provided sufficient evidence that the National Agreement mandated such reductions.

In adopting the judge's finding that Smith in his speeches given during the week of March 17, 1992, violated Sec. 8(a)(1), we do not suggest that an employer may not inform its employees of its desire to work together with them in harmony. Here, however, as the judge found, viewing the speech in its entirety and in context of the Respondent's unlawful course of conduct, Smith's remarks conveyed to the employees that unionization could result in the withholding of further investment in the Washington plant or its closure.

[6] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[7] We, accordingly, find it unnecessary to pass on the judge's separate finding of a violation in connection with Manager of Nonunion Relations Richard Young's statements in his group meetings with employees concerning their losing the 12-hour shifts. Any such additional violation would be cumulative and would not affect the recommended Order or notice.

ies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and be maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 3, 1992.

''(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

Dalia Belinkoff, Esq., for the General Counsel.
Dorothy Rosensweig, Esq. (Kaufman, Naness, Schneider & Rosensweig, P.C.), of Jericho, New York, and *Steven E. Combs, Esq. (GE Plastics)*, of Pittsfield, Massachusetts, for the Respondent and Employer.
Alan Hart, of Parkersburg, West Virginia, and *Eugene Elk*, of Pittsburgh, Pennsylvania, for the Charging Party and the Petitioner.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. These cases were tried in Parkersburg, West Virginia, on January 19, 20, and 21 and February, 1, 2, 3, and 4, 1993, August 23, 24, 25, 30 and 31, September 1, and November 15 and 16, 1994. Their chronology, extended through 1992, 1993, and 1994.

Upon a charge filed by United Electrical, Radio and Machine Workers of America (UE) (the Petitioner in Case 6–RC–10676), on April 3, 1992,[1] and amended on June 29, the General Counsel, by the Regional Director for Region 6 of the National Labor Relations Board (the Board) issued a complaint in Case 6–CA–24454 against the Respondent, General Electric Company (GE) (the Employer in Case 6–RC–10676) on July 2. Thereafter, by order dated July 8, the Regional Director consolidated the objections filed by the Petitioner in Case 6–RC–10676 with Case 6–CA–24454 for purposes of hearing, ruling, and decision. Upon a further charge filed by UE in Case 6–CA–24911, on September 29, and amended on October 13, December 10, February 3, and April 27, 1993, and a further charge filed by UE on January 21, 1994, in Case 6–CA–26117, the Regional Director issued an order consolidating cases and consolidating complaint and notice of hearing in these two cases on May 16, 1994. On May 26, 1994, on the uncontested motion of the General Counsel, I ordered the consolidation of Cases 6–CA–24911 and 6–CA–26117 with Cases 6–CA–24454 and 6–RC–10676 for all purposes. Thereafter, at the hearing, on August 31, 1994, upon approving a settlement in Case 6–CA–24911, I severed that case from the consolidated complaint and remanded it to the Regional Director for purposes of compliance. The consolidated complaint, as amended, alleges that GE violated Section 8(a)(1) of the Act by threatening employees with economic reprisals if they selected UE as their collective-bargaining representative, coercively interrogating employees about their union activity and union sentiment and the union activity and union sentiment of other employees, giving employees a gift because they rejected the Union as their collective-bargaining representative, and by restricting its employees' enjoyment of their rights under Section 7 of the Act.[2] The consolidated complaint also alleged that GE violated Section 8(a)(4), (3), and (1) of the Act[3] when it terminated an employee because of his union activity and because he was the subject of an unfair labor practice charge and testified against GE in the instant proceedings. GE, by answers to the complaints and the amended consolidated complaints, denied the commission of the alleged unfair labor practices.

On October 15, 1991, the Petitioner filed a petition for certification of representative in Case 6–RC–10676. Thereafter, pursuant to a Decision and Direction of Election issued by the Regional Director for Region 6, on February 25, an election was conducted in the following unit on March 26 and 27:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Washington, West Virginia, facility; excluding the office clerical employees and guards, professional employees and supervisors as defined in the Act.

The tally of ballots cast in the election in Case 6–RC–10676 showed that out of approximately 610 eligible voters, 607 voted. Of the latter amount, 197 voted for the Petitioner, 377 voted against the Petitioner, and there were 33 challenged ballots.

On April 3, the Petitioner filed timely objections to conduct affecting the results of the election in Case 6–RC–10676. On July 8, following an investigation of the objections, the Regional Director issued an order directing hearing on objections and notice of hearing. The Regional Director determined that the issues raised by the Petitioner's objections in Case 6–RC–10676 were encompassed in the complaint issued in Case 6–CA–24454 and on July 8, ordered a

[1] Unless otherwise stated, all dates occurred in 1992.

[2] Sec. 7 of the Act provides in pertinent part: ''Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .''

[3] Sec. 8(a)(1), (3), and (4) of the Act provides, in pertinent part, that: ''It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 . . . .

. . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

consolidated hearing in both cases. On July 22, the Regional Director issued a corrected order consolidating cases and an order directing hearing on objections and notice of hearing, which reflected the deletion of two objections.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs and reply briefs filed by the General Counsel, GE, and UE,[4] I make the following

FINDINGS OF FACT

I. JURISDICTION

GE, a New York corporation, manufactures ABS plastics for nonretail sale at its facility in Washington, West Virginia, where it annually sells and ships goods valued in excess of $50,000 directly to points outside the State of West Virginia. The consolidated complaints allege, GE by its answers admits, and I find that during the 12-month period ending March 31, GE purchased and received goods at its Washington, West Virginia facility valued in excess of $50,000. GE admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. GE also admits, and I find that UE is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND AND ISSUES

In 1989, UE began an organizing campaign among the production and maintenance employees at GE's Washington, West Virginia plant, which produces acrylonitrite butadiene styrene (ABS) plastic, which it sells under the trade names of Cycolac, in pellets, and Blendex, in powder form. On October 15, 1991, UE filed a representation petition in Case 6–RC–10676, seeking certification as the exclusive collective-bargaining representative of the Washington plant's production and maintenance employees.

GE and UE have been parties to a series of collective-bargaining agreements covering various units of GE's employees. The latest of these agreements, referred to in this proceeding as the GE-UE Agreement, was effective from July 1, 1991, until June 26, 1994. This agreement did not cover GE's Washington plant. However, in that agreement, GE and UE provided that, upon certification of UE, or one of its locals, by the Board as the collective-bargaining representative of a unit of GE employees, the National Agreement will automatically cover that unit, when UE or a UE local, also certified, sends a letter to GE within 30 days ratifying that agreement. I find from the testimony of UE's international representative, Eugene Elk, that the National Agreement has always been ratified.

The issues presented in Case 6–CA–24454, as amended, are whether in response to UE's representation petition, GE violated Section 8(a)(1) of the Act by:

(1) Threatening employees with loss of benefits and changes in their working conditions.

(2) Threatening that the Washington plant would close.

(3) Interrogating employees about their union sympathies and activities and the union activities and sentiment of other employees.

(4) Threatening employees with temporary layoffs, loss of benefits, prolonged strikes and other unspecified reprisals.

(5) Giving clocks to its employees as a reward for rejecting UE as their collective-bargaining representative.

All except one of the objections in Case 6–RC–10676 consolidated in this proceeding were reflected in the alleged violations of Section 8(a)(1) of the Act in Case 6–CA–24454. In the objection not reflected in those allegations, UE complained that during the critical period, after the filing of its petition in Case 6–RC–10676,[5] GE gave free gloves to all the maintenance employees at its Washington plant to discourage them from supporting UE.

The issues presented by the consolidated complaint in Case 6–CA–26117 are whether GE violated Section 8(a)(4), (3) and (1) by discharging Fernando DaCosta because of his union activity and because he was the subject of an unfair labor practice charge and had testified against GE in these proceedings, and; whether GE violated Section 8(a)(1) of the Act by warning its employees against discussing DaCosta's discharge, and circulating petitions regarding it.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Robert Smith*

In late October 1991, after UE had filed its petition for an election at GE's Washington plant, its general manager, Robert Smith, held eight meetings with groups of his production and maintenance employees at the plant. The employees' attendance at these meetings was mandatory. Smith was the only speaker at all eight meetings. He used the same format for each meeting. Smith stood at the front of the Washington plant's medical conference room, using transparencies to deliver his anti-UE message.

Smith began each session with an overview of the Washington plant's performance results, including the rate of orders, safety, costs, and customer complaints. He compared performance with the plant's goals for the 90 days ending October 31, 1991. Smith went on to project the goals for the next 90 days. He read from the transparencies and the notes he had written on them.

One of the transparencies Smith read from, which he had amended, declared, in pertinent part:

> GE-UE National Agreement would automatically change the following practices:
>
> Eliminate 11th Holiday
> Eliminate 2% Vacation Pay
> . . . .
> . . . .
> Change overtime and nightshift premiums
> Change all local pay practices to conform to National Agreement.

Another transparency which Smith read to the eight groups of employees contained the following:

> LOCAL NEGOTIATIONS:

[4] GE's and the Union's respective motions to correct the transcript are granted. I have consolidated the corrections in App. A, which is unpublished.

[5] Under Board policy, the critical period for considering objectionable conduct extends from the date of the filing of the representation petition up to and including the election. *Gupta Permold Corp.*, 289 NLRB 1234, 1256 (1988).

Payroll Status—Company and union could negotiate whether production and maintenance employees would be hourly or non-exempt. If status is changed to hourly, the following site practices would change:

Current site Practice	**Contract**
Article XXIV—Jury Duty	
Full pay	Make up pay
Article XXVII—Sick and personal pay	
20/5 and salary continuance	only allows 2-5 days p/yr based on service

This could be an area that the company could negotiate over to offset the additional costs associated with this contract for night shift premiums & overtime wages.

The pertinent portions of article XXIV of the National Agreement, which did not appear on the tranparencies, are as follows:

> 1. When an hourly paid employee is called for service as a juror, he will be paid the difference between the fee he receives for such service and the amount of straight time earnings lost by him by reason of such service, up to a limit of 8 hours per day and 40 hours per week.
>
> 2. When a salaried employee is called for service as a juror, he will continue to be paid his normal straight time salary during the period of such service.

The pertinent portions of article XXVII of the National Agreement, which did not appear on Smith's transparencies, are as follows:

> 1. An hourly employee with one or more years of continuous service, absent because of (a) personal business . . . or (d) personal illness for which weekly disability benefits are not payable under the General Electric Insurance Plan, or under Workmen's Compensation, will, with the Manager's approval, receive Sick and Personal Pay for each absence of a half day or longer, up to the number of days applicable in accordance with the following schedule:

Maximum Days of Sick and Personal Pay for Continuous Service	Each Calendar Year
1 through 9 years	2 days
10 through 14 years	3 days
15 through 24 years	4 days
25 years and over	5 days

Smith read from a transparency headed ''Subjects that can be negotiated locally.'' He also read a note which he had inserted, which declared: ''There are several provisions that are negotiated locally.'' This transparency went on to state that the current wage rate would be a subject of negotiations. It cautioned that ''3 things can happen during negotiations: things could get better, things could stay the same, things could get worse.'' Smith also read his handwritten comment, ''No guarantees.'' The transparency's left hand corner showed section 1. Article VI of the current GE-UE National Agreement, which pertains to wage rates, and provides:

> 1. Any question which affects hourly rates, piecework rates or salary rates of individuals or groups shall be subject to negotiations between the Local and local management.

The next transparency in the sequence was headed ''Local Negotiations.'' Next to this heading, Smith wrote: ''There has been a lot of discussion over the 12 hour schedule.'' The printed material stated in substance that work schedules and in particular 12-hour shifts were a topic for local negotiations. The transparency went on to point out that ''UE's position has been that employees on 12-hour shifts would get 1-1/2 over 8. Company's position is that 12-hour shifts not available under those O.T. provisions. If company and union could not reach agreement, the company would implement 21-turn.'' Smith's handwritten comments on the transparency were that GE's position is clear and it will implement the 21-turn shift schedule if the Union does not accept GE's proposal. The final comment on the transparency was: ''Simply put—No UE members in GE enjoy a 12-hour work schedule.'' The left hand column of the transparency showed section 1(c) of article V of the GE-UE Agreement, which is as follows:

> (c) Any grievance resulting from the establishment of a new working schedule will be handled through the regular grievance procedure. The Company will give the Locals respectively affected as much notice as possible of any proposed changes in the working schedule of hourly and salaried employees and will discuss proposed changes with the Locals.

At the end of each meeting, Smith provided each employee with a copy of the 1991–1994 GE-UE Agreement, to which he had referred in his transparency entitled ''Local Negotiations'' which I have quoted above. Smith entertained questions from the audiences.[6] The record disclosed neither their content nor his responses.

The General Counsel and the Union contend that Smith's remarks and his transparencies included threats of reprisal which violated Section 8(a)(1) of the Act. Section 8(a)(1) of the Act makes it an unfair labor practice for an employer ''to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them'' in Section 7 of the Act, which include the right to self-organization. However, the following language in Section 8(c) of the Act allows employers to express their sentiments regarding union efforts to organize employees:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evi-

[6] The General Counsel's witness, who testified about Smith's remarks at the meetings he conducted in late October 1991, provided sketchy accounts, which in many instances seemed to be impressions or summaries of what Smith said. Though much of what these witnesses recalled was reflected in Smith's transparencies, much of what he said had quickly escaped their memories. In view of these infirmities in the employees' testimony, I have relied on Smith's transparencies and the comments he wrote on them to make my findings of fact regarding the content of his remarks at the eight meetings he conducted with his production and maintenance employees in late October 1991.

> dence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

In applying Section 8(a)(1) and (c) of the Act to GE's communications to its Washington plant employees during the period between October 15, 1991, and the election, on March 26 and 27, I have found guidance in the following teachings of the Court in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618, (1969):

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his views about a particular union, so long as the communications do not contain a ''threat of reprisal or force or promise of benefit.'' He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based upon misrepresentation and coercion, and as such without the protection of the First Amendment.

''Whether or not a statement or series of statements has a coercive or threatening effect is an assessment which must be made 'in the context of its labor relations setting,' taking into account 'the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.''' *Peabody Coal Co. v. NLRB*, 725 F.2d 357, 363 (6th Cir. 1984), quoting from *Gissel Packing Co*., 395 U.S. at 617.

I find that Smith's transparency announcing that the ''GE-UE National Agreement would automatically'' eliminate the 11th holiday, and the 2-percent vacation pay which GE had granted to its Washington plant employees, ''change overtime and night shirt premiums,'' and ''change all local pay practices to conform to the National Agreement'' is without the protection of Section 8(c) of the Act. Unlike the other transparencies set forth above, which enjoyed the protection of Section 8(c), because they were couched in terms of what could occur in the context of collective bargaining,[7] this transparency did not refer to anything in the GE-UE Agreement which required such automatic changes. Thus, I find that Smith did not show the employees at his eight group meetings that the loss of the 11th holiday, the 2-percent vacation bonus, and the other changes recited on the same transparency were likely to result from negotiations with the Union or that the GE-UE Agreement mandated such losses and changes. In short, Smith did not carefully phrase his predictions about the automatic effect of voting for the Union on the eleventh holiday, the vacation bonus, the overtime and night-shift premiums, and the local pay practices on the basis of objective fact sufficient to convey demonstrably probable consequences beyond GE's control. Accordingly, I find that by Smith's warnings to its production and maintenance employees that these losses and changes would be automatic consequences of selecting the Union as their collective-bargaining representative, GE threatened its employees with economic reprisals and thereby violated Section 8(a)(1) of the Act. *Monfort of Colorado*, 298 NLRB 73, 85 (1990), enfd. in pertinent part 965 F. 2d 1538 (10th Cir. 1992).

From March 17 until March 24, Plant Manager Smith conducted six meetings for voting unit employees at the Washington plant. The format for all six meetings was identical. At each meeting, Smith read the same anti-UE speech. Each meeting lasted 30 to 35 minutes. Smith did not stray from his text and did not take any questions.[8] Smith's speech included the following text, which he read at all six meetings:

> Since our revitalization plan was announced last May we have made good progress to improve our site's performance. The whole purpose of the revitalization was to build through teamwork and involvement an organization that can win in today's tough competitive environment.
>
> At the same time, our business (like many others) has been rocked by a world-wide recession that has made winning even tougher. When we started taking these actions last year, I said that change would not be easy and not everything we did would be perfect, but together we would work to fix our mistakes. I believe we can still do that and do it without the UE. A union that doesn't, in my opinion, understand our business or what we believe in here.
>
> The choice we make this (next) week will have a profound impact on our future. The people who buy our products, our sales force that sells our products and the company that supplies the investment dollars for our growth are all watching what happens here. We need to send them a signal, a clear signal that tells them they can count on us to be a dependable supplier, committed to continuous improvement without the threat of possible strikes. The best way to send the signal is to vote ''NO'' on Thursday and Friday.
>
> In every difficult situation there are lessons to be learned. This long campaign has taught us all the need for more open straightforward communications and the necessity to be responsive. We must learn to work together and get everyone involved in the business. I'm afraid if we can't do that—we won't have a business here ten years from now.
>
> Dow, Monsanto, Chi Mei and others are all formidable competitors that have the ability to steal our busi-

[7] *Kawasaki Motors Mfg., Corp., U.S.A.*, 280 NLRB 491, 493 (1986).

[8] I have based my findings of fact regarding Smith's remarks at the March meetings upon his written speech. The credible testimony of Smith and three of his colleagues, who were present as he spoke, showed that, at each meeting, he read from the prepared speech which I received in evidence, and did not extemporize. Much of the testimony of employees who heard Smith's March speech is corroborrated by the text. However, because of inconsistences between individual employees' recollections and between those recollections and the text, and my impression that the employee witnesses were partial to the General Counsel in this regard, I have based my findings exclusively on the text which Smith read.

> ness away. Making no effort to change the way we do business would have left the door wide open for them to claim our customers.
>
> The Union promises the comfort of the past and a return to a world that no longer exists in the plastics industry. If you choose the UE, we could be heading in the wrong direction.
>
> I believe there is tremendous potential in this organization and there is nothing we cannot do together. But if the UE divides our forces, I honestly do not know what could happen to this site.

The message a listening employee would receive from the quoted excerpt is that choosing the UE would result in disharmony among the Washington plant employees and cause GE to shut it down. Smith warned the listening employees that they ''must learn to work together and get everyone involved in the business'' or ''we won't have a business here ten years from now.'' Thus, did Smith make working together, with a single purpose, the essential element for the Washington plant's survival. Having established the importance of harmony in assuring the continuation of their employment at the Washington plant, Smith goes on to tell his listeners that by choosing the UE as their collective-bargaining representative they ''could be heading in the wrong direction,'' and then suggests that UE could impair that harmony and thus endanger the Washington plant's existence.

Smith's remarks suggested that the employees' selection of UE as their collective-bargaining representative might disrupt the Washington plant's harmony and cause the loss of their jobs. However, Smith did not report any instance in which UE had caused such disruption. Thus, he failed to show objective data from which the listening employees might conclude that the closing of the Washington plant might occur because of forces beyond GE's control. Smith's remarks came at the end of an anti-UE campaign, in which he and other GE management members unlawfully threatened economic reprisals, as found elsewhere in this decision, and thus were especially coercive. *Harrison Steel Castings*, 293 NLRB 1158, 1159 (1989).

Smith's warning that ''the company that supplies the investment dollars for our growth . . . [is] watching what happens [in the coming election]'' followed by his recommendation that the employees send the proper signal by rejecting UE also raises the spectre of a loss of jobs. The listening employees knew that GE was the owner of the Washington plant. The record also shows that GE was in fact investing in the plant, openly, before and during UE's campaign. Smith's warning suggested that if the employees gave the wrong signal, GE might cease investing in the Washington plant. This warning followed closely upon Smith's references to ''today's tough competitive environment'' and ''a worldwide recession that has made winning even tougher.'' Given the tough competitive environment depicted in Smith's speech, his warning that GE would withhold further investment implied that the Washington plant would cease being competitive and jobs would be lost. I find that this warning also violated Section 8(a)(1) of the Act.[9]

[9] The amended consolidated complaint did not allege that Smith violated Sec. 8(a)(1) of the Act by warning that GE might cease investing in the Washington plant, if the production and maintenance employees voted for the UE. However, the facts necessary to this finding were uncontroverted and were fully litigated at the hearing. Under Board policy, I am authorized to find this violation and to recommend a remedy for it. *Pepsi Cola Bottling Co.*, 301 NLRB 1008, 1016 fn. 16 (1991).

B. *Terry Hindmarch*[10]

In January, Terry Hindmarch, manager of labor relations for GE's consumer service division of general appliances, at Louisville, Kentucky, held about 20 meetings with groups of 20 or 25 employees at the Washington plant. At each meeting, Hindmarch showed, on transparencies, GE's view of how negotiations would work for the Washington plant under the GE-UE Agreement.

In discussing the effect of ratification of the GE-UE Agreement, Hindmarch used a transparency which included the statement ''Employees will lose things they currently have by ratifying the National Agreement.'' Hindmarch did not rely on that language in his explanation to the employees. Instead, he explained that ''if they came under the terms of the National Agreement that, in fact, that could be an issue for them to consider because there were certain things that they could stand to lose by being covered by this National Agreement.'' He used holidays as an example, telling the employees that: ''This contract provides for 10 holidays.'' Hindmarch also told the employees that they would lose the 11th holiday, which they had at Washington. He also told the employees that their 2-percent vacation bonus was not in the National Agreement and thus there was a conflict. One of the transparencies which Hindmarch projected at his meetings showed conflicts between the National Agreement and local practices and benefits at the Washington plant, and listed them, as follows:

> A. Vacation Shutdown
> B. Temporary Lack of Work
> C. Holidays-Automatically Lose One
> D. 2% Vacation Payment

I find that by telling the Washington plant employees that they would automatically lose one holiday and creating the impression that they would automatically lose their two percent vacation bonus if they voted for UE and ratified the GE-UE Agreement, Hindmarch violated Section 8(a)(1) of the Act. *Monfort of Colorado*, 298 NLRB at 85.[11]

[10] I based my findings regarding Hindmarch's conduct on his admissions and supporting exhibits.

[11] At the hearing, General Counsel amended the consolidated complaint to allege that GE had violated Sec. 8(a)(1) of the Act when Hindmarch threatened employees with the loss of benefits if they selected UE as their collective-bargaining representative in the coming election. GE amended its answer to admit Hindmarch's supervisory status and deny the alleged violation. Thereafter, over GE's objection, I permitted UE, the Petitioner in Case 6–RC–10676, to amend its objections to include an allegation that Hindmarch's threats had interfered with the election. In its brief, GE renewed its objection and seeks reversal of my ruling in this regard. According to GE, UE's amendment was untimely and precluded by Board policy. I find no merit in GE's position.

Board policy permits the use of evidence obtained in an unfair labor practice proceeding to set aside a representation election, where the subject matter of the unfair labor practice complaint allegation was not referred to in any objection filed in the election proceeding. *Framed Picture Enterprise*, 303 NLRB 722 fn. 1 (1991). I am also guided by Board policy which permits a Regional Director

Continued

C. *Richard Young*

In 1990, the Washington plant instituted a 12-hour shift for its production and maintenance employees. GE Personnel Relations Consultant Richard Young headed a task force which developed and tituted the 12-hour shift to replace the 8-hour, 21-turn shift. In April 1990, Young's task force issued a report explaining the proposed 12-hour shift, which GE distributed to its Washington plant employees. Among the limitations included in this report was: ''No additional cost can be incurred by the business.'' In May or June 1990, the Washington plant employees voted for the 12-hour shift on a 1-year trial basis. However, the Washington plant has continued to operate on that basis since 1990.

Since 1990, GE's payment of overtime and shift premiums for Washington plant employees on the 12-hour shift schedule has been as follows: Overtime has been paid at the rate of time and one-half for hours in excess of 40 in a week and all Sunday hours except for part of the fourth Sunday in the schedule, which was paid at double time. Saturday hours were paid at straight time unless they were in excess of 40, in which case the time and one-half rate applied.

In mid-March, Young, who was now manager of nonunion relations for the GE lighting business, the Washington plant's human relations manager, Ken Hudson, and Jim Harmon, program manager, personnel relations for GE, based at Fairfield, Connecticut, conducted 18 or 20 small group meetings with Washington plant employees, who were expected to vote in the Board-conducted election, later that month. Each meeting lasted from 1-1/2 to 2 hours.

At each meeting, the three GE officials followed the same format. They went over the UE's constitution and a UE local's constitution and bylaws. Hudson showed a transparency which contained a letter from GE's chief labor counsel, Christopher A. Barreca, to GE's vice-president-industrial relations, Arthur V. Puccini. Among other topics, Barreca's letter discussed the interpretation and application of the GE-UE Agreement to the Washington plant's[12] 12-hour shift, as follows:

> The GE-UE National Agreement does not permit the type of 12-hour continuous shifts in Parkersburg without the payment of overtime. The contract's overtime provisions for continuous shifts are based on a different work schedule. The application of the GE-UE National Agreement would create a substantial additional overtime cost for the Parkersburg business. This cost could be avoided by changing back to an eight-hour continuous shift schedule. It is inaccurate and misleading for organizers to promise that they will guarantee 12-hour shifts under this agreement since Article V, Section 1(c) of the GE-UE National Agreement gives the Company the right to change working schedules after providing notice to the Union.

Hudson prepared copies of Barreca's letter which he placed on a table at each meeting so that employees could pick them up.

I find from Young's uncontradicted testimony that at ''almost all the meetings,'' employees asked about the fate of the 12-hour shift. I also find from his full and forthright testimony[13] that he would respond by telling people that:

> [U]pon receipt of certification and notification of ratification of the National Agreement, [GE] would send to the Union officials in Pittsburgh and the Union officials, whoever were the local officials in charge at that time, our notice of intent to revert back to the 21-turn, 8 hour shift schedule because of the economic considerations that were involved with paying the overtime premiums in the National Agreement.
>
> That we would indeed continue to negotiate this matter with the Union, if they won the election, but while we were negotiating, we would be on the 21-turn schedule.

In further amplification of the foregoing, Young told the employees that GE would change their 12-hour shift schedule to a 21-turn, 8-hour shift schedule upon expiration of a 7-day notice period.

Young continued his response by reading verbatim from GE's contract interpretation manual regarding its right to make schedule changes after affording the ''Locals respectively affected as much notice as possible of any proposed changes in the working schedule of hourly and salaried employees . . . .''

Young did not tell the listening employees that GE could not afford the overtime it would incur under the provisions of the GE-UE Agreement. Instead, he told them that ''it was an economic disadvantage.''

Unlike Barreca's letter, which I find to be a statement of opinion, protected by Section 8(c) of the Act, Young's responses to the employees were a threats not entitled to such protection. Young was announcing that if the Washington plant voted for the UE and ratified the GE-UE Agreement, GE would respond by unilaterally ending the 12-hour shift, and reverting to the 21-turn, 8-hour shift. Of course, according to Young, there would be bargaining with UE if the Union had won the election. However, even before such bargaining had begun, GE, unilaterally, would deprive the Washington production and maintenance employees of the 12-hour shift, and with it, the desirable overtime features, which it offered. Young did not base his prediction on objective fact to convey to his listeners his or GE's belief that termination of the 12-hour shift would be a demonstrably probable consequence beyond GE's control. Nor did he suggest that this condition of employment might be lost in the give-and-take of bargaining. Young did not show any comparison

to broaden his or her investigation to include matters not mentioned in the objections to conduct affecting the results of an election. *White Plains Lincoln Mercury*, 288 NLRB 1133, 1137 (1988). Here, the subject matter of the objection surfaced at the hearing on the unfair labor practice allegations and affected the election's outcome. The addition of an objection based upon Hindmarch's fully litigated conduct did not present GE with any surprise. Accordingly, I reaffirm my ruling.

[12] Barreca's letter refers to the Washington plant as ''Parkersburg.''

[13] I have reviewed the testimony of the General Counsel's witnesses regarding Young's remarks and the showing of Barreca's letter at the mid-March meetings. The inconsistencies between recollections and aspects of their demeanor on cross-examination suggesting a partisan attitude favoring the General Counsel accounts cast doubt on the reliability of the General Counsel's witnesses in this regard.

between the overtime required under the GE-UE Agreement and the overtime costs GE had experienced since 1990. Instead, he asserted only that ''it was an economic disadvantage.'' He did not show that GE could not modify the 12-hour shift to elevate the ''disadvantage.'' GE was fixed on ending the 12-hour shift if the Washington plant employees voted for the UE and ratified the GE-UE Agreement.

In sum, I find that the intended and understood import of Young's responses was not to show how UE's success in the coming election would inevitably force GE to abandon the 12-hour shift at the Washington plant. Instead, I find that he was warning the Washington plant employees that if they voted for UE, GE would respond by quickly ending the 12-hour shift and returning to the less favorable 21-turn 8-hour shift schedule. By this threat of economic reprisal, I find that GE violated Section 8(a)(1) of the Act. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 620 (1969).

D. *Marvin Brannon and James Hewitt*

On March 9, maintenance employee Arnett Purkey encountered his immediate supervisor, Marvin Brannon,[14] at the Washington plant's Cycolac maintenance shop. Brannon entered the shop and began discussing the Union. Brannon, said that it was his opinion that if the Washington plant employees ''went for the union,'' Jack Welch would probably ''shut the plant down to show the other plastic plants to teach them a lesson.'' Purkey expressed doubt that Welch would do that. Brannon replied that Welch would do as he wished. Brannon, a first level supervisor, presented his remark as his opinion.[15] There was no showing that Brannon's, remarks suggested that he had heard Welch make such a threat. I find it unlikely that a listening employee would conclude that Brannon was either speaking on behalf of Welch or reporting what Welch had said. Therefore, I find Brannon's remark to Purkey was not a threat and was protected by Section 8(c) of the Act. Accordingly, I further find that Brannon's expression of opinion did not violate Section 8(a)(1) of the Act. *Rood Industries*, 278 NLRB 160, 163 (1986). I shall recommend dismissal of the allegation that it violated that section of the Act.

On March 16, Foreman Brannon told GE employee Dale Ramsey, a mechanic at the Washington plant, that if the Union got in ''they would close the plant and do away with the 12 hour days within two weeks.'' Ramsey, replied, that Brannon could not believe that, himself. Brannon changed the subject, and returned to a discussion of work.[16] This exchange occurred in Brannon's office, at the Washington plant. In this instance Brannon's remarks and his failure to assure Ramsey that he did not believe that GE would resort to such strong economic reprisals, were outside the protection of Section 8(c) of the Act. Brannon did not present these remarks as his opinion. Instead, Brannon spoke as a member of management, who was in a position to hear higher management's expressed intentions. GE, through Brannon, was threatening to punish the Washington plant employees with plant closure and discharge, if they insisted on exercising their right under Section 7 of the Act to select UE as their collective-bargaining representative in the coming election. I find that by Brannon's warning of plant closure and loss of employment if the Washington plant employees voted for UE, GE violated Section 8(a)(1) of the Act. *Fontaine Body & Hoist Co*., 302 NLRB 863, 864 (1991).

In late October 1991, at the Dew Drop Inn, in Parkersburg, West Virginia, GE employee Thomas Harvey was seated at a bar, two bar stools from Team Manager James Hewitt, a supervisor at the Washington plant, where Harvey worked. However, Hewitt was not Harvey's supervisor at this time. After an introductory conversation, Hewitt asked how Harvey felt about the Union. Harvey said he felt ''strong about the union.''

Harvey's UE hat, adorned with UE stickers, provoked questions from Hewitt. Harvey replied: ''[Y]ou should see how I feel by my hat.'' Hewitt asked if Harvey knew any other people, who were for the Union. Harvey did not provide the information. Instead, he replied that Hewitt's questions were inappropriate. Hewitt asked if Harvey knew people and how they would vote. Harvey refused to provide the requested information, saying: ''I don't think that is appropriate. I don't want people being hassled or being asked questions about how they feel.''[17]

Prior to this conversation, Harvey had frequently encountered Hewitt at the Dew Drop Inn. Harvey had been visiting the inn once or twice weekly and had seen Hewitt on about three out of four occasions. The two had a friendly relationship, whenever they met at the Dew Drop. They conversed about football, their children, and how things were going.

The issue raised here is ''whether under all the circumstances, the interrogation reasonably tend[ed] to restrain, coerce, or interfere with rights guaranteed by the Act.'' *Rossmore House*, 269 NLRB 1176, 1177 (1984). In dealing with this issue, I have considered the environment in which the interrogation occurred. It took place away from the plant, during nonworking hours. Harvey and Hewitt were in the casual surroundings in which they had frequently engaged in social conversation. Hewitt was not Harvey's supervisor.

[14] In its answer to the complaint in Case 6–CA–24454, GE admitted that Brannon was a supervisor within the meaning of Sec. 2(11) of the Act.

[15] My findings regarding Brannon's remark on March 9 are based on Purkey's uncontradicted testimony. Brannon did not testify in this proceeding.

[16] I have credited Ramsey's uncontradicted testimony regarding Brannon's remarks to him on March 16.

[17] According to Hewitt's testimony, his encounter with Harvey occurred in March and did not include any interrogation by Hewitt. Instead, according to Hewitt, Harvey offered to bet that the UE would win the election and Hewitt said no. On cross-examination, Hewitt admitted that he visited the Dew Drop Inn on a regular basis in 1991 and 1992. He also admitted that in September 1991, he attended management meetings at which GE officials told him and other Washington plant supervisors what they could and could not do during the UE campaign. Also Hewitt admitted that his superiors expected him to give them information on how the vote count looked in his area of supervision. Hewitt understood that if he heard something that had a bearing on the outcome of the election, GE management expected him to report it to his superior. Thus, Herwitt's testimony suggests that as early as September 1991, he was motivated to learn about employee sentiment toward the UE. However, in assessing the credibility of the two witnesses involved in this incident, I noted that Hewitt, who testified on August 24, 1994, had doubts about the accuracy of his recollection of what happened in September and October 1991. In contrast, Harvey, who testified on January 20, 1993, seemed more certain as he gave his account of their conversation. Harvey also seemed to be testifying frankly on both direct, and cross-examination regarding this incident.

Harvey was wearing a UE cap adorned with UE stickers and thus was openly showing support for that Union. Hewitt did not accompany his questions with any threat of reprisal, promise of benefit, or solicitation of Harvey's withdrawal from the UE. These factors were sufficient to insulate Hewitt's questions from the coercive effect of GE's violations of the Act during its anti-UE campaign in 1991 and 1992. I find, therefore, that the General Counsel has not shown by a preponderence of the evidence, that the Company violated Section 8(a)(1) of the Act by Hewitt's questioning of Harvey regarding his union sentiment and the union sentiment of other GE employees. I shall recommend dismissal of the allegation that Hewitt's interrogation of Harvey in October 1991 violated Section 8(a)(1) of the Act.

E. *GE's Handbills*

During the weeks immediately preceding the Board-held election at the Washington plant on March 26 and 27, GE issued a number of anti-UE handbills which it displayed at that plant, on bulletin boards and in posters. GE also distributed some of these handbills to its employees' homes.

One such handbill asks:

> Have you ever been sent home because your production line is not running or your job is temporarily stopped?
>
> Then why would you want to start now[?]

This handbill goes on to suggest that a UE assertion that ''temporary layoffs don't occur'' is untrue. The handbill asks: ''If this is true, then why are temporary layoffs frequently referred to in the UE-GE national contract?'' The handbill makes reference to four provisions in the GE-UE Agreement covering circumstances arising from temporary layoffs. Absent from the handbill is any GE-UE Agreement provision requiring temporary layoffs.

According to Richard Young, this handbill was in response to UE claims in its campaign propaganda that temporary layoffs do not occur under the UE. According to Young, GE was ''trying to set the record straight that under the provisions of the [GE-UE Agreement], temporary layoffs do happen.'' While Board policy allowed GE to explain that the GE-UE Agreement does not prevent layoffs, GE was not free to suggest that it would begin imposing layoffs at Washington, if the employees voted for UE. See *Robert Bosch Corp*., 256 NLRB 1036, 1045 (1981). Here, I find that GE's response was a threat.

The quoted handbill's message is a prediction that if the Washington plant employees select the UE as their collective-bargaining agent, they will begin to experience temporary layoffs. In assessing this message, I note that the handbill does not present objective facts showing that forces beyond its control would require GE to impose such layoffs. Thus, fulfillment of this prediction is wholly within GE's power, as operator of the Washington plant. In light of its manifestations of hostility to UE, as found elsewhere in this decision, GE's warning in this handbill is a threat that it will use its control of the plant's operation to punish the Washington employees if they support UE in the coming election. *Gissel Packing Co.*, 395 U.S. at 618-619. I find that by this threat, GE violated Section 8(a)(1) of the Act.

A second handbill appearing on the Washington plant's bulletin boards and as a poster, in March, was entitled ''The Score Card.'' It consisted of two columns and contained the following message:

THE SCORE CARD

UE Stands To Gain	**What You Have at Risk**
$182,000 per year	Non-exempt status
	Prescription Drug Card
You Get	Taxi Allowance
Temporary Layoffs	Meal Tickets
The obligation to pay dues or agency fees every month for the rest of your working life	20 Sick Days and 5 personal days
	Salary Continuation for Sick Leave
	2% Vacation Pay
All the obligations of union membership in the union constitution and by-laws	11th Paid Holiday
	General Pay Increases for union-free employees
Super Seniority for Union Officers	
Possible Strikes	

THE UE DOESN'T ADD UP!

You Be The Judge! Vote for the future. VOTE NO!

Yes —— No ——

I find that GE's message in this handbill was that if UE wins the election, the Washington plant employees would suffer temporary layoffs. Further, according to ''The Score Card,'' employees, who were nonexempt, and thus salaried, risked losing that status. Finally, all employees in the voting unit stood to lose all of the benefits and conditions of employment listed on the right hand column of the sheet if UE won the coming election. GE controlled working schedules and the flow of work and was the source of the listed conditions of employment and benefits. Here were veiled threats that GE would deliberately resort to temporary layoffs and possibly rescind one or more of the listed conditions of employment and benefits if displeased by a UE victory. *NLRB v. Kaiser Agricultural Chemicals*, 473 F.2d 374, 381 (5th Cir. 1973). Accordingly, I find that GE's warnings in ''The Score Card,'' violated Section 8(a)(1) of the Act.

Another of GE's preelection handbills, issued a few weeks prior to the Board-held election at the Washington plant, addressed the matter of temporary layoffs. Reproduced on the face of the handbill was a bulletin which UE LocaL 506 issued in 1991, to the bargaining unit employees at GE's Erie, Pennsylvania plant, announcing temporary lack-of-work layoffs there in 1991 and 1992, and the possibility of permanent lack-of-work layoffs in late 1991, at the same plant. Across the top of the handbill was ''TEMPORARY LAYOFFS? YES!!'' On the left hand side of the lower portion of the handbill was a GE logo and the suggestion that the reader vote no. In the lower right hand portion of the handbill was the following statement:

> What is the UE telling you about temporary L.O.W. now? It happens in Erie and could happen at the Washington Site if you vote for the UE.

Here again, GE's effort to set the record straight about layoffs went beyond explaining that the GE-UE Agreement does not protect employees from temporary layoffs. Instead, this handbill's message was that if the Washington employees voted for UE, the risk of layoffs would result. The implication is that GE may impose temporary layoffs on the Washington employees if they support UE in the representation election. I find that by this handbill GE violated Section 8(a)(1) of the Act.

Another handbill which GE issued at the Washington plant, within 1 month of the Board-held election raised the spectre of ''a long and ugly strike.'' The handbill asserts that the reader knows ''the union's position on 12-hour shifts, wages, benefits'' and ''the company's position on these same issues.'' The handbill goes on to warn: ''The company and the union organizers are MILES APART!'' Continuing, the handbill asks:

> Are you willing to see this Site possibly become another victim in *long, bitter negotiations*? Are you willing to face the possibility of a *long and ugly strike*?

At the bottom of the sheet, the final words are ''VOTE NO!''

The message in the foregoing handbill is that GE and UE will be unable to agree on economic issues of great importance to the employees. It also implies that the employees' only way of retaining the 12-hour shift and the other benefits and conditions of employment would be by engaging in ''a long and ugly strike.'' Nowhere in this handbill did GE express its willingness to bargain in good faith. The handbill implies that the employees' choice is either to reject UE or face the futility of ''long bitter negotiations'' and ''a long and ugly strike'' if they seek to retain the 12-hour shift, the 11th holiday, and the other benefits and conditions of employment mentioned in ''The Score Card,'' which I have quoted above. By thus suggesting that the employees faced futile bargaining and an inevitable strike if they voted for UE, I find that GE again violated Section 8(a)(1) of the Act. See *Boaz Spinning Co.*, 177 NLRB 788, 789 (1969).

F. *The Gloves*

In 1989, the Washington plant's management invited its technology center employees to the plant's cafeteria to hear a glove manufacturer's representative explain the results of a safety survey, see the types of gloves GE intended to stock for their use, and see which of them was best suited for their individual needs. GE had boxes of the gloves in the cafeteria. After exposing the employees to the discussion and the glove display, GE invited the technology center employees to take gloves, try them and report to management on how well they worked. The employees could take as many pairs as they wanted, take them home, and have them for personal use. Included in this giveaway was a butyl glove costing about $10 per pair.[18]

[18] I based my findings regarding the 1989 glove giveaway on the detailed and uncontradicted testimony of Stephen Ball, the Washington plant's manager of site safety and security.

Prior to the preelection period, GE had made free gloves available to its Washington plant employees. Supplies of work gloves, suitable for work use, were available in work areas. Employees could take them as needed, and use them at will.

There was a second glove giveaway at the Washington plant during the critical period preceding the representation election. On or about February 6, GE issued copies of a letter to the Washington plant employees announcing this glove giveaway as follows:

> Dear Team Member:
>
> During the recent all employee meetings, I reviewed our progress for 1991 and the challenges we are sure to face in 1992. In the area of Site safety, I explained our two key objectives for 1992. We are striving to reduce injuries by 50 percent and complete the initial stages of work required to achieve OSHA STAR registration. A Site safety initiative which we are calling ''Back To Safety Basics: Make Time For Safety In 1992'' has been launched to support both of these key objectives. I33Hand Safety is the ''Back to Safety Basics'' topic we are focusing on this month. Did you know that hand injuries account for nearly half of our Site injuries? Our safety team recently conducted a survey of the jobs each of you perform. They analyzed the types of hand injuries occuring at our Site, and reviewed hand protection alternatives. These efforts led to a new selection of safety gloves which we will begin carrying in our Storeroom on February 14. Our glove selection will include very thin ''BEST-N-DEX'' gloves, a variety of chemically resistant gloves, heat resistant ''CRUSADER FLEX'' gloves for working on mills, medium weight abrasion resistant leather gloves, and others.
>
> A trailer will be set up by the Gatehouse on **Thursday and Friday, February 13 and 14 from 1 p.m. to 7 p.m. each day**, and everyone who stops by will receive a sample of each new glove which will be stocked in the Storeroom. Representatives also will be on hand to answer questions and tell you all about the gloves.
>
> Enclosed is a voucher which will enable you to receive three pairs of leather gloves. Please fill it out and stop by the trailer on the 13th and 14th.
>
> Remember to make time for safety /s/ Bob
> R.E. Smith
> General Manager

In January, Safety and Security Manager Ball instructed Washington plant managers to see that hand safety was included in their safety meetings in February. He also scheduled safety training to show employees how to use gloves which GE had selected for their use. These training activities occurred at the Washington plant. On February 3, the Washington plant issued new policies regarding hand protection and a glove selection chart to management staff and safety committee members with instructions to give them to the 250 holders of safety manuals. The record did not disclose whether the scheduled training occurred or whether the new hand protection policies and glove selection charts reached

the production and maintenance employees prior to February 13.[19]

On February 13 and 14, GE parked a trailer on its Washington site and opened it up to its employees. All employees of the Washington site, including those not involved in the coming representation election, were free to enter the trailer, receive three pairs of leather gloves for a signed voucher, and an unlimited number of other displayed work gloves. There were two glove company representatives, an industrial hygienist, and plant safety staff members present to answer questions about the gloves. GE also gave the employees a copy of the new hand safety policy and glove selection chart which explained the use of the listed gloves and told how employees could obtain replacements from the Washington plant.

GE did not require employees to take gloves appropriate for their work. Safety and Security Manager Ball admitted that the employees could take types of gloves which were not designated as appropriate for their work. Nor did GE survey the employees, or request the employees to report, on how well the gloves performed at work. On each of the two days, the trailer was open 7 hours. A total of about 1000 employees went through the trailer. Employees from GE sites in the vicinity of the Washington plant were also invited to the glove giveaway.[20]

UE contends that the glove giveaway was objectionable conduct which so impaired the election as to warrant setting it aside. GE urges me to reject that contention. I find merit in UE's contention, for the reasons which follow.

The Court, in *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964), recognized that:

> [t]he danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

Accord: E.g., *B & D Plastics*, 302 NLRB 245 (1991).

In *B & D Plastics*, supra, the Board explained:

> Our standard in preelection benefit cases is an objective one. (Citation omitted.) To determine whether granting the benefit would tend unlawfully to influence the outcome of the election, we examine a number of factors, including: (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. In determining whether a grant of benefits is objectionable, the Board has drawn the inference that benefits granted during the critical period are coercive. It has, however, permitted the employer to rebut the inference by coming forward with an explanation, other than the pending election, for the timing of the grant or announcement of such benefits. [Citations omitted.]

In the instant case, approximately 6 weeks before the election, GE invited unit and nonunit employees to a glove giveaway. GE claims it gave the gloves as part of an ongoing safety campaign. Yet, on February 13 and 14, there was no meeting of the plant employees and no lecture at the trailer on plant safety and the proper use of these gloves at the workplace. GE did not ask the employees to report to Washington's management about their experience with the various gloves at work. The safety theme sounded in General Manager Smith's letter of February 6 faded when the employees arrived at the trailer. Instead, GE confronted the employees with largess. The employees had vouchers for three pairs of leather gloves and were free to help themselves to all the other types of gloves without limit on quantity. The cost of the leather gloves was $5.35 per pair. GE extended this benefit to all Washington plant employees, and to employees at other nearby GE sites, whether or not their work called for gloves.

Coming in February, only 6 weeks before the election, the glove giveaway had as its backdrop GE's anti-UE campaign which, before and after the giveaway, included threats of economic reprisals such as plant shutdown, withdrawal of benefits, and changes in conditions of employment. Thus, the employees could reasonably have seen this giveaway as part of GE's effort to influence their votes in its favor

GE's attempt to show that the giveaway was part of its safety program falls short of the mark. The employees visiting the trailer on February 13 and 14 did not attend a safety meeting. Nor was there any organized affirmative effort at the trailer, by GE, or the manufacturers' representatives, to link a particular glove with a specific job. GE showed no interest in learning whether the gloves were effective in the workplace. In contrast with its 1989 predecessor, the 1992 glove giveaway was a show of generosity. Thus, ''the suggestion of a fist inside the velvet glove'' analogy which the Court drew in *Exchange Parts*, supra at 409, is particularly apt here. GE's gift of gloves was a warning that ''the source of benefits now conferred . . . dry up if it is not obliged.'' Id. I find that GE's glove giveaway, on February 13 and 14, interfered with the employees' free choice sufficiently to warrant setting aside the election in Case 6–RC–10676.

G. *The Clocks*

On March 13, General Manager Smith ordered 1174 acrylic desk clocks, costing $22 each, for distribution at the Washington plant. On April 20, Smith sent a note to all of his subordinate Washington plant managers, the subject of which was ''CLOCKS.'' The text was as follows:

> Dottie is OK with handing out the clocks to the workforce. I have 1100 of them which will cover all Parkersburg people, except IA, Specialty & Polymerland.
>
> What I would like to see happen is each clock is hand carried by a team manager, supervisor, or section manager, etc. to an employee with a handshake and a thank you.
>
> Mary will arrange to get the little cards put into each box before handing out.

[19] My findings regarding GE's effort to stress hand safety in January and February, were drawn from Ball's testimony and corroborating exhibits received in evidence.

[20] My findings regarding the February glove giveaway are based on the testimony of Ball and employees Yates and Purkey.

> Now, we'll need to explain our reason for this reward and tell people what to say.
>
> Reason—Theme of Pride in Past and Vision for the Future is carried forward.
>
> The past year has been a difficult one because of economy and change. The organization has done well through everything and has shown the ability to adapt to change, get involved and continuously improve. Our performance trend is positive and we'd like to thank people for their efforts and encourage them to keep up the good work to move us forward even further. Our customers and the business is counting on us.
>
> We'll need a contact for the Bank building and Technology to get involved.
>
> To personally cover everyone will take some time. I would prefer not to do a mass, impersonal handout—we'd lose some of the real reason for the reward.
>
> The gifts are under $25.00 so income to the employee is not an issue. Let's do it—the sooner the better, it must be well communicated up front.

The Washington plant management handed out the clocks in the April 20 and 28 time frame, 24 to 32 days after the representation election and 17 to 25 days after UE filed its objections to conduct affecting the outcome of that election. The clocks were given to all of GE's Parkersburg area employees, except those at Polymerland and Information Alliance. Included with each clock was a small card signed by Smith with the following inscription: ''Time is a precious commodity. Time past, which we remember with pride, is experience gained. Our future is opportunity created by each and every one of us.''[21]

Employee Robert Stout received one of the desk clocks in April. His immediate supervisor, Bill Brandt, came to him shortly before the 9 a.m. break and asked if he could speak to Stout for a minute. When Stout said yes, Brand said that he was about to shake Stout's hand and give a clock to him. Stout said that if the clock ''is to buy my silence about the union, Bill, I am still for the union to represent us.'' Brand insisted that he had to give the clock to Stout and shake his hand; that the clock was to unify the workers and to show GE's appreciation for the work the employees had performed. Stout reiterated his support for union representation. Brandt shook Stout's hand and gave the clock to him.

In mid-June, Richard Young, manager of nonunion relations for GE's lighting business, attended a meeting at GE's Morgantown, West Virginia facility. It was a plant meeting for GE employees held by management during a union organizing campaign. Young spoke to the meeting about the consequences of voting for the Union, discussed two union contracts, and answered some questions, including one about Parkersburg. In response to a question, Young remarked that at Parkersburg, there were some frivolous charges about unfair labor practices because GE had given clocks to the employees. He added, in substance, that he could not understand that because the gift of clocks was to show there were no hard feelings.[22]

As explained in *Electric Hose Co*., 262 NLRB 186, 205 (1982), increases in benefits given while objections to a Board-held election are pending, violate Section 8(a)(1) of the Act if the facts show the employer was rewarding the employees for rejecting a union or if the employer was attempting to influence the outcome of a possible second election if the union's objections warranted a rerun. Here, GE timed the clock distribution to begin less than 1 month after UE had lost the Board-held election at the Washington plant and while UE's objections were under investigation. In his memorandum to his subordinate managers, Smith prescribed the reason which each supervisor was to give as he or she handed a clock to an employee. The theme was to be ''pride in past and vision for the future.'' There was no mention of the election or the defeat of UE either in Smith's instructions or in the prescribed message each supervisor was to convey to the employees. Yet, later in the same memorandum, Smith stresses the importance of one-on-one contact in distributing the clocks. He rejects a mass handout because, ''[W]e'd lose some of the real reason for the reward.'' In view of GE's vigorous anti-UE campaign, Smith's leading role in it, and the timing of the clock distribution, ''the real reason for the reward'' was UE's defeat. Young's comment at Morgantown erased any doubt as to Smith's ''real reason'' for giving clocks to the employees only a few weeks after UE's defeat.

Smith testified that he ordered the clocks in early March and that he intended to give them to all the Washington employees as a reward for their performance in his revitalization process and to encourage them to continue moving forward. However, his testimony was belied by the timing of the purchase while the election campaign was in its final stage, the timing of the distribution so soon after the election and the filing of UE's objections, his ''real reason'' remark in his memorandum, and Young's admission that the clock was to show there were no hard feelings.

Smith's purpose in ordering the clocks in early March may have been to reward the employees for their performance, but he may also have been thinking about using them after a victory over UE. The election results later that month gave him an opportunity to kill two birds with one clock. However, whatever lawful motive may have crossed his mind, the circumstances surrounding the gift suggested that UE's defeat had something to do with it. Stout and the other Washington plant employees were aware of the timing of the gift, and of GE's strenuous, and apparently successful anti-UE campaign. In these circumstances, Smith's motive is immaterial. *Waco, Inc*., 273 NLRB 746, 748 (1984).

Smith's testimony on cross-examination shows that the revitalization program did not produce any noteworthy results during the first 4 months of 1992. The UE's defeat in the election in late March provided a noteworthy event. That Smith extended the gift of clocks to employees outside the voting unit does not rebut the strong evidence of the ''real reason.'' The inclusion of those employees provided a flimsy disguise. I find that by giving clocks to the Washington plant

[21] My findings regarding the clock distribution are based upon Smith's and employee Robert Stout's testimony.

[22] I based my findings regarding Young's comment on the testimony of Tim Fetty, a GE Morgantown employee, who impressed me as being a frank witness, who was conscientious about providing his best recollection. In response to a leading question, Young denied ever saying anything in any meeting at Morgantown about the clocks. Also, on cross-examination, Young testified that to the best of his recollection there were no questions regarding Parkersburg at the Morgantown meeting in June. However, as Fetty seemed to have a vivid and detailed recollection, which he gave in an objective manner, I have credited his testimony in this regard.

employees between March 20 and March 28, both dates inclusive, GE was thanking the unit employees for rejecting UE and hoping to insure a second rejection if a second election were directed, and thus violating Section 8(a)(1) of the Act. *Casa Duramax, Inc*., 307 NLRB 213, 215 (1992),

H. *Fernando DaCosta's Discharge*

1. The facts

GE employed Fernando DaCosta from 1985, until November 16, 1993. From 1985 until 1987, DaCosta worked at GE's Lynn, Massachusetts plant. Thereafter, until his discharge, DaCosta worked at the Washington plant. He became active in UE's organizing at the Washington plant in 1990, when it began.

DaCosta distributed literature for UE inside and outside the plant from 1991 until 1992. He distributed UE literature 5 to 7 times outside the Washington plant gates. He and Foreman Ben Elder had a conversation regarding union literature which DaCosta had given to another UE employee. Elder had confiscated the literature, and had torn it up. On the next day, DaCosta asked Human Resources Manager Burt Willingham to tell Elder to refrain from such conduct.

Aside from soliciting signatures on between 20 and 30 authorization cards, DaCosta wore a UE jacket, a UE button, and had union stickers on his lunch box and protective helmet. DaCosta expressed support for UE at anti-UE meetings which GE management held with Washington plant employees prior to the election. He was a member of UE's organizing committee at the Washington plant. He constantly found opportunity to support UE in debates with members of the Washington plant management, including building A's manager, Paul McKnight.

During UE's campaign at Washington, DaCosta attended UE meetings in Pennsylvania, Ohio, and New York. In 1991, UE distributed newsletters at Washington, which reported on DaCosta's participation in those meetings, and in some instances included photographs of DaCosta.

On January 21, 1993, DaCosta testified in these proceedings on behalf of the General Counsel. He authenticated some of GE's anti-UE handbills and testified about three anti-GE meetings at the plant, which he attended, respectively, in October 1991, mid-March, and late March 1992. The UE filed an unfair labor practice charge on December 10, 1992, alleging that GE had violated Section 8(a)(3) and (1) of the Act by giving him a negative evaluation and threatening him with discipline.

DaCosta also recorded three or four messages on a telephone line for UE. These were informational messages which employees could reach by telephone.[23]

On October 8, 1993,[24] Team Manager Bill Kirk, a supervisor, told Michael Huff, the manager of finishing at buildings A and D, at the Washington plant, about threatening and harassing behavior on A crew. Kirk reported that he had just spoken to two employees from that production crew, who were waiting in his office, and that there was a very serious situation requiring investigation. Huff accompanied Kirk to the latter's office

At Kirk's office, Huff and Kirk listened to the two employees, Don Flannery and Dave McCase. Flannery reported that the atmosphere on the A crew was very confrontational and that the possibility of violence was ''very real.'' Flannery reported threats, and loud and vulgar language, which were heard in the lunchroom and on the plant intercom system. McCase and Flannery agreed that employee Lou Molinaro was the target of most of this misbehavior. They named four employees on A crew, as the people engaged in the harassment. The four were Paul Wise, Fernando DaCosta, Jim McCarthy, and Steve Malson. Huff assured the two employees that their complaint would be investigated as soon as possible.

Huff, after obtaining General Manager Craig Morrison's approval, enlisted the assistance of the plant's human resources manager, Kenneth Hudson, in the investigation. On the same day, Huff, Kirk and Hudson interviewed Don Flannery, who provided more details about the situation on A crew.

Flannery also asserted that on October 7, when he was working on the WA production line in finishing A building, DaCosta, who was then working with him on the C crew, had slowed the production line down for no apparent reason. Flannery explained that DaCosta had narrowed the flow of liquid plastic from a mill in the production line. According to Flannery, when he, Flannery ran the mill on the same shift, he had maintained a wider flow and saw no reason to narrow it.

Next, Huff, Kirk, and Hudson interviewed employees Molinaro and McCase on October 8. McCase asserted that the situation on A crew was extremely serious. McCase told of a confrontational atmosphere. He reported hearing DaCosta threaten employee Molinaro with bodily harm on several occasions. McCase stated that employees Malson and Wise were also involved in the harassment. McCase said nothing about a slowdown in production on October 7.

Molinaro reported being harassed. He had been so troubled that he had considered quitting his job. Instead, he tried to distance himself from the people who were harassing him. However, he refused to identify them.

Upon receiving a report of the interviews of Flannery and McCase, General Manager Morrison involved himself in the investigation on the afternoon of October 8. He interviewed Molinaro, McCase, and Flannery. Flannery repeated what he had said earlier that day to Huff, Kirk, and Hudson.

Flannery told Morrison that DaCosta had intentionally slowed the WA production line down on October 7. In his detailed report, Flannery asserted that on October 7, between 2 and 6 p.m., he and DaCosta were on overtime on the WA production line. Flannery said that they were rotating as mill operators on the WA line ''where the material comes off the mill and is cut into strips and goes down in the dicing area . . . .'' According to Flannery, when DaCosta took over the mill operation, he would repeatedly, narrow the strip on the machine. When Flannery returned to operate the mill, he, Flannery, would widen the strip.

Flannery told Morrison that he did not understand why DaCosta had narrowed the strip. Further, Flannery reported that there were no mechanical problems with the machine. He had no problem operating the machine at its normal

[23] My findings regarding DaCosta's employment history and union activity are based on his credible uncontradicted testimony.

[24] All dates referred to in my findings of fact and in my analysis and conclusions regarding DaCosta's discharge, occurred in 1993, unless otherwise stated.

speed and DaCosta did not report any problem when he turned the machine over to Flannery.[25]

On Saturday morning, October 9, Morrison, Huff, and Hudson interviewed DaCosta and employees Wise and McCarthy in the plant manager's office. DaCosta was interviewed first. DaCosta responded to Hudson's ''good morning'' with ''what's good about it,'' and ''this looks like an ambush to me.'' Morrison explained the purpose of the investigation and informed DaCosta of the harassment charges, the allegation that he misused the plant intercom, and the slowdown allegation. Morrison warned that these charges were serious and that disciplinary action up to termination could result if the charges against him were substantiated.

DaCosta denied ever having slowed the production line down. He wanted to know details of the allegations against him, including exact dates, names, and the identity of his accusers. DaCosta remarked that it did no good for him to say anything because he had no voice. Morrison, Huff, and Hudson refused to disclose any of the information which DaCosta had requested.

Morrison ended the interview, telling DaCosta that the investigation would continue and that management would get back to him when they could supply more details. Hudson warned DaCosta and the two other employees against further harassment and enjoined them from verbally or physically retaliating against anyone they believed to be involved in the allegations against them.[26]

On October 22, Huff and another management representative, Dean Wesson, interviewed employee Kathy Carr for between 1 and 1-1/2 hours. Carr told Huff and Wesson that she had suffered sexual harassment, that on several occasions, she had recently heard DaCosta using vulgar language on the plant intercom. Huff asked Carr if she had been involved in any situations where employees had slowed down production lines for no apparent reason.

Carr revealed that approximately 2 weeks earlier, while she was working on the WA line, in A building, she had seen DaCosta narrowing the strips on that line. Carr also stated that in her view, DaCosta' conduct was unusual. Huff asked her if there was anything unusual occurring on the line at that time and if there were other employees involved. Carr reported that there were no problems on October 7 and that Flannery had operated the mill that day without slowing the line down.

Carr reported on a variety of topics. She told Huff and Wesson of employee Malson's sleeping on the job; that he often deserted his work station, leaving others to do his work, and would be gone for an extended period of time; and, that he received an unusual number of outside calls at work.

She believed that employee Wise was the instigator of threatening behavior on the A crew. She was extremely sorry for employee Lou Molinaro, who was so upset that he had difficulty working. Carr expressed concern about the low morale in building A and claimed four employees were responsible for the problem. She named DaCosta, Wise, Malson, and McCarthy.[27]

Soon after Carr's interview of October 22, Huff reviewed the Washington plant's records covering the WA production line for September and up to and including October 7. Huff did not find any production or maintenance problems recorded for DaCosta's shift on October 7.

On October 29, Wesson and Steven E. Combs, a GE plastics attorney, interviewed Carr and obtained an uncoerced, signed statement from her, which included the following:

> On at least three occaisions [sic] that evening when Fred [DaCosta] relieved Don [Flannery] on the mill, he cranked the knives on the mill so that it would cut a much more narrow strip of plastic. The effect of us cutting a more narrow strip is that I had to slow the operation of the Banbury which in turn cut production. Each time that Don would return and relieve Fred he would widen the strips again thus enabling me to increase the speed of the Banbury which in turn increased production.
>
> The code we were running that night was running smoothly. There were no dicer problems or resin flow problems or any other reason that I know of for Fred [DaCosta] to slow production intentionally. I can think of no reason for Fred [DaCosta] to have narrowed the strip other than to intentionally slow production. There was no problem with the run and I believe we had a full crew. Don remarked to me on at least one occasion (sic) that what Fred [DaCosta] was doing was unbelievable and was causing him difficulty in that he would have to work harder to catch up when he relieved Fred [DaCosta].

On cross-examination before me, Carr admitted telling Combs and Wesson that she saw no reason for DaCosta's repeated narrowing of the strip on October 7. The GE representatives transcribed Carr's remarks in a statement format, asked her to review it and permitted her to make changes before she signed the statement excerpted above. Carr also admitted telling Combs and Wesson that in another incident of narrowing the strip, she had heard DaCosta say ''they didn't give us a bagger so we narrowed in the strips.''

Morrison, Huff, and Hudson interviewed DaCosta in Morrison's office on November 5. Morrison advised DaCosta that two employees had said he had intentionally narrowed

[25] My findings regarding the investigation leading up to October 9, are based on the uncontradicted testimony of Huff and Morrison.

[26] I based my findings regarding DaCosta's interview on November 5, on Huff's and Morrison's detailed testimony which they gave in an objective manner. I have not credited DaCosta's testimony, where it differed from Huff's or Morrison's testimony. At times, on cross-examination, DaCosta was argumentiative and occasionally evasive. I also perceived from his frequently quick equivocal answers that he was not searching his memory. Though I cautioned him, DaCosta continued in the same manner. DaCosta also showed disrespect for this forum by his lethargy and evasive answers when asked to reveal the location of his notes and surrender them to GE's counsel for use in cross-examination. In sum, DaCosta seemed quite anxious to assist the General Counsel's cause.

[27] My findings regarding Carr's interviews on October 22 and 29 are based on Michael Huff's testimony. Lapses of memory, evasiveness, and argumentative responses on cross-examination cast serious doubt upon the reliability of Carr's testimony. Her attempts to repudiate both a statement she gave to GE on October 29, and an affidavit she gave to the General Counsel in March 1994, also impaired her credibility in this proceeding. In contrast, Huff impressed me as a conscienteous witness, who was providing his best recollection frankly.

the strips on the WA production line, while he was working overtime on the C crew, on October 7. Morrison pressed DaCosta for a response to these allegations.

DaCosta said he did not intentionally slow production and that he could not remember October 7, specifically. He also said he had detailed personal records to document any problems which might have arisen while he was operating equipment and he would check them. DaCosta never got back to Morrison or any other member of the Washington plant's management with any information about problems on the WA production during his shift on October 7.

The matter of union activity came into the discussion, when DaCosta charged that he was being investigated because he was a union supporter. Morrison denied DaCosta's accusation. DaCosta rejected the denial.

At one point in the exchange, DaCosta said, ''Look, if you're going to fire me, just get it over with and fire me.'' Morrison replied that it was premature to talk of disciplinary action, that the investigation was incomplete, and that management had not decided on the disciplinary action. However, Morrison warned that the allegations against DaCosta were serious and that termination was a possibility.

I find from Morrison's and Huff's testimony, that following the confrontation with DaCosta on November 5, the Washington plant's management pursued the investigation of his alleged production slowdown. Morrison's management staff was unable to find any explanation for slowing down the WA line on October 7. In the meantime, GE waited to hear from DaCosta about his notes. He did not come forward with any information.

At Morrison's direction, Huff met with DaCosta on November 15 and asked for information regarding the slowdown of October 7 on the WA line. Huff cautioned DaCosta that it was ''extremely important'' that he provide whatever information he had to clear up the matter, as management was close to deciding on disciplinary action.[28]

DaCosta produced no new information. Instead, he said he had checked his records and the Banbury chart finding that the line had run at the same speed all day on October 7. He further remarked that he was relatively new to the WA line and would not have slowed it down without good reason. DaCosta finally admitted that he had information regarding October 7 but it was part of his defense. When Huff sought to discuss the information, DaCosta refused.

On the same day, Morrison, Huff, Hudson, and Wesson conferred about DaCosta. After Huff reported his last encounter with DaCosta. The four decided that DaCosta had deliberately attempted to slow production on the WA line on October 7 by narrowing the strips. They agreed that termination was the appropriate action for DaCosta's attempted production sabotage. Morrrison discharged DaCosta on November 16, after handing him a letter calling his ''act of deliberately slowing the production line'' on October 7 ''an act of sabotage.'' GE has not offered to reinstate DaCosta.

On November 30, Washington plant employee Carl James Yates was working the 12-hour night shift, beginning at 6 p.m. At 5 a.m., 1 hour before the end of his shift, his supervisor, Jim Eaton, approached Yates and said that there were complaints that Yates had been conversing with employees at the warehouse about DaCosta's discharge. Eaton prohibited from going to the warehouse and talking about DaCosta's discharge. Yates objected and Eaton replied that Yates could not talk about DaCosta outside of his work area. Yates was not aware of any plant rules restricting discussion outside his work area.[29]

On the morning of November 17, employee James Cogar, who had learned of DaCosta's discharge, went to Mike Huff's office. Cogar asked Huff to call a meeting of the A crew team because of some problems that required addressing. Cogar expressed regret about DaCosta's discharge and said he feared that other employees might be discharged. Cogar mentioned that the crew was having problems with Don Flannery and David McCase.

Huff said that a meeting was necessary and he would set one up. Huff also told Cogar that GE had discharged DaCosta after an investigation, that the company did not want to do it, and that the best thing the employees could do was forget about DaCosta, get on with making plastic and satisfy customers. Huff added that he did not want to see any petitions or other paperwork circulating around the building because it would not do any good. Employees of A building and A crew had already prepared and circulated a petition complaining about DaCosta's recent bad progress report.

Huff held a meeting of A crew on November 18. He assured the employees that GE had discharged DaCosta only after a thorough investigation. He said the discharge was regrettable but was a last resort, and that the employees should forget DaCosta and get on with their work. An employee asked if the employees could meet without management and work out their problems. Huff said there would not be any such meeting.[30]

2. Analysis and conclusions

The General Counsel and UE argued that GE discharged DaCosta because of his union activity and because he had testified in these proceedings, and that the reason proffered by GE was pretextual. GE sought to avoid findings that DaCosta's discharge violated the Act, as alleged, by showing that it discharged him for misconduct.

Under Board policy, where the record shows that an employer's hostility toward union activity was a motivating factor in a decision to discharge an employee, the discharge will be found to be unlawful unless the employer is able to demonstrate, as an affirmative defense, that it would have discharged the employee even in the absence protected activity. *NLRB v. Transportation Management Corp*., 462 U.S. 393, 402–403 (1983), affg. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Where it is shown that the business reason advanced by the employer for its action was a pretext—that is, that the reason either does not exist or was

[28] My findings regarding the November 15 interview, are based on Huff's testimony. My reasons for crediting Huff, are set forth in fn. 26.

[29] I based my findings of fact regarding Eaton's remarks to Yates on the latter's credible and uncontradicted testimony.

[30] I based my findings of fact regarding Cogar's conversation with Huff on the employee's testimony. Huff admitted telling Cogar that a petition protesting Da Costa's discharge would not accomplish anything. However, Huff admitted that his memory of the conversation was incomplete. In contrast, Cogar, who impressed me as an objective witness, seemed to have a better grasp of their conversation on November 17.

not in fact relied upon—it necessarily follows that the employer has not met its burden and the inquiry is logically at an end. *Wright Line*, 251 NLRB at 1084.

Discrimination by an employer against an employee for testifying in a Board proceeding or for filing an unfair labor practice charge violates Section 8(a)(4) and (1) of the Act. The *Wright Line* principles also apply to alleged violations of Section 8(a)(4) and (1) of the Act. *Pepsi-Cola Bottling Co.*, 301 NLRB 1008, 1053–1054, 1057, (1991), enfd. 953 F.2d 638 (4th Cir. 1992).

DaCosta's support for UE was open and constant from 1990 until his discharge on November 16. He was a member of UE's organizing committee, and encouraged Washington plant employees to support UE by wearing UE stickers on his helmet and distributing pro-UE literature to the Washington plant employees. In 1992, he openly supported UE at a plant meeting called by management to pursuade employees to vote against UE. He also showed his pro-UE attitude in discussions with A Building Manager Paul McKnight, Foreman Elder, and Human Resources Manager Willingham. Thus, the Washington plant management was well aware of DaCosta enthusiastic support for UE. They also knew that he had testified on behalf of the General Counsel in January, and that he had been named as a discriminatee in an unfair labor practice charge filed by UE on December 10, 1992, in Case 6–CA–24911, which had to do with a negative performance review which GE had given him and an alleged threat of discipline against DaCosta.

During its anti-UE campaign, GE manifested hostility which included threats of retaliation. Thus did GE show its willingness to violate the Act in defense of the Washington plant's nonunion status. However, GE did not aim any threats of retaliation at DaCosta. He pursued his union activity at the Washington plant freely until November 16. However, the record shows that GE discharged only one other Washington plant employee from January 1, 1991, until August 10, 1994. In light of GE's union animus, this factor suggests that GE singled Da Costa out for harsh treatment because of his leading role in UE's campaign.

GE claims that it fired DaCosta for attempting to slow production on October 7. In support of this claim, GE had reports from employees Flannery and Carr showing that for no apparent reason, DaCosta had deliberately narrowed the flow of plastic on the WA line, repeatedly. Though afforded opportunities to explain his conduct, DaCosta failed and refused to provide any substance to support his denial of wrongdoing. Not until the hearing before me, did DaCosta try to show good cause for his apparent misconduct on October 7. However, he never bothered to offer any explanation to GE prior to November 16. The Washington plant management warned him that if true, the allegation that he attempted to slow production could lead to his discharge. When he failed to rebut the incriminating evidence provided by Flannery and Carr, GE discharged him. There was no showing that another employee engaged in a deliberate slowdown and got away with less punishment.

I have no doubt that GE was unhappy about DaCosta's union activity, the charge filed regarding his negative evaluation, and his testimony in this proceeding. Yet I cannot find that any or all of those factors motivated GE to discharge him. Accordingly, I find that the General Counsel has not shown by a preponderence of the evidence that GE discriminated against DaCosta within the meaning of Section 8(a)(4) or (3) of the Act. I shall, therefore, recommend dismissal of the allegations that DaCosta's discharge violated Section 8(a)(4), (3), and (1) of the Act.

It is well settled that Section 7 of the Act extends protection to employee protests to management regarding the discharge of a fellow employee. *Buck Brown Contracting Co.*, 283 NLRB 488, 513 (1987). That section also protects employees' discussions regarding an employment claim, such as a discharge. *Vought Corp.*, 273 NLRB 1290, 1294 (1984), enfd. 788 F.2d 1378 (8th Cir. 1986).

Both supervisors violated the Act. I find that Supervisor Eaton, by restricting where Yates could talk about DaCosta's discharge, interfered with, restrained and coerced employee Yates in the exercise of his Section 7 right to discuss DaCosta's discharge with other Washington plant employees, and thereby violated Section 8(a)(1) of the Act. I find that a second violation of Section 8(a)(1) of the Act occurred in Building Manager Huff's remarks to Cogar, which amounted to a prohibition against the employee's circulation of a petition or other paper protesting DaCosta's discharge.

CONCLUSIONS OF LAW

1. The Respondent, General Electric Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Electrical, Radio and Machine Workers of America (UE), is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by, (a) in late October 1991, threatening employees with loss of benefits and changes in conditions of employment if they selected the Union as their collective-bargaining representative; (b) in January 1992, telling employees that that they would lose benefits if they selected the Union as their collective-bargaining representative; (c) in the week beginning on or about March 17, 1992, threatening employees that GE would discontinue its investment in the Washington plant and close the Washington plant if they selected the Union as their collective-bargaining representative; (d) in mid-March 1992, threatening employees with loss of the 12-hour shift if they selected the Union as their collective-bargaining representative; (e) on March 16, 1992 threatening employees with closure of the Washington plant, and a change in their conditions of employment, if they selected the Union as their collective-bargaining representative; (f) in March 1992, distributing handbills containing threats of temporary layoffs, loss of benefits, loss of wage increases, changes in conditions of employment, and long and bitter strikes, if the employees selected the Union as their collective-bargaining representative; (g) between March 20 and 28, 1992, both dates inclusive, giving clocks to the Washington plant employees to reward them because they rejected the Union as their collective-bargaining representative; (h) on November 17,1993, by prohibiting employee Carl Yates from discussing the discharge of employee Fernando DaCosta with employees in the Washington plant's warehouse; and (i) on November 30, 1993, by imposing upon employee James Cogar a prohibition against circulating a petition, at the Washington plant, regarding DaCosta's discharge.

4. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent did not violate Section 8(a)(1) of the Act by in late October 1991, by coercively interrogating an employee about his union sentiment and activities and the union sentiment and activities of fellow employees.

6. The Respondent did not violate Section 8(a)(4), (3), and (1) by discharging employee Fernando DaCosta on November 16, 1993.

6. The Respondent did not violate Section 8(a)(1) of the Act on or about March 9, 1992, by threatening an employee with plant closure if the Washington plant employees selected the Union as their collective-bargaining representative.

The Petitioner's Objections

I have found that during the critical period between the filing of the representation petition in Case 6–RC–10676, on October 15, 1991, and the dates of the election, March 26 and 27, 1992 (*Ideal Electric & Mfg. Co*., 134 NLRB 1275, 1278 (1961)), the Respondent violated Section 8(a)(1) of the Act and engaged in other objectionable conduct which affected the results of the election, as set forth in section III of this decision. It follows, therefore, that the election in Case 6–RC–10676 must be set aside, and I so recommend. *Dal-Tex Optical Co*., 137 NLRB 1782, 1786–1787 (1962); *Leas & McVitty, Inc*., 155 NLRB 389, 390–391 (1965). Accordingly, I shall recommend that the election held on March 26 and 27, 1992 in Case 6–RC–10676 be set aside and that the case be remanded to the Regional Director for Region 6 with directions to conduct a new election at an appropriate time.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

The Respondent, General Electric Company, Washington, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of benefits, loss of wage increases, changes in conditions of employment, loss of the 12-hour shift, loss of employment through the withholding of investment or plant closure, temporary layoffs, prolonged and bitter strikes, and other reprisals if they select United Electrical, Radio and Machine Workers of America (UE), or any other labor organization as their collective-bargaining representative.

(b) Giving clocks or other gifts to reward employees for rejecting the United Electrical, Radio and Machine Workers of America (UE), or any other labor organization or to influence their choice with regard to union representation in any future Board-conducted representation election.

(c) Restricting employees' rights to engage in protected concerted activity by instructing them not to circulate petitions or paperwork protesting the discharge of a fellow employee.

(d) Restricting employees' rights to engage in protected concerted activity by instructing them not to discuss the discharge of a fellow employee.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Washington, West Virginia facility, copies of the attached notice marked ''Appendix B.''[32] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election held on March 26 and 27, 1992, in Case 6–RC–10676 be, and the same is set aside, and the case is remaded to the Regional Director to conduct a new election at such time as he deems that the circumstances permit the employees to express their free choice regarding the selection of a collective-bargaining representative.[33]

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[32] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[33] If the Respondent fails or refuses to comply with the terms of the Order pertaining to Case 6–CA–24454, the Regional Director is authorized to conduct the new election on the Union's request. *Ideal Baking Co*., 143 NLRB 546, 554 fn. 9 (1963).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees with loss of benefits, loss of wage increases, changes in working conditions, loss of the 12-hour shift, loss of employment through withholding of investment, or plant closure, temporary layoffs, prolonged and bitter strikes and other reprisals if they select United Electrical, Radio and Machine Workers of America (UE), or any other labor organization as their collective-bargaining representative.

WE WILL NOT give clocks or other gifts to reward our employees for rejecting the United Electrical, Radio and Machine Workers of America (UE) or any other labor organization or to influence their choice with regard to union representation in any future Board-conducted representation election.

WE WILL NOT restrict our employees' rights to engage in protected concerted activity by instructing them not to circulate petitions or paperwork protesting the discharge of a fellow employee.

WE WILL NOT restrict our employees' rights to engage in protected concerted activity by instructing them not to discuss the discharge of a fellow employee.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

GENERAL ELECTRIC COMPANY